

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1828 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 or any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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HEIRS OF DECD. LALA BHORELAL HARJIVANDAS

Versus

BHANUMATI AJITKUMAR

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Appearance:

MR SURESH M SHAH for Petitioners

MR PV HATHI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/12/1999

ORAL JUDGEMENT

In this revision application under Section 29(2) of the Bombay Rents, Hotel and Lodge House Rates (Control) Act, 1947 (hereinafter to be referred to as the Bombay Rent Act) the original defendants have challenged the decree of eviction passed by the Court of Small Causes at Ahmedabad in HRP Suit No.1327 of 1980 and confirmed by the appellate Bench of the same Court in Civil Appeal No.150 of 1990. The decree of eviction has been passed both on the grounds of arrears of rent and

also on the ground of subletting by original defendant no.1 (petitioner no.1 herein) to original defendant no.2 (petitioner no.2 herein).

2 Before dealing with the contentions raised by the learned counsel for the petitioners, it is necessary to set out a few facts leading to filing of this revision application.

2.1 The suit premises consist of about 8 rooms in a building called "Tribhuvandas Market" in Railwaypura, Ahmedabad city. The property was let out to defendant no.1 at a monthly rent of Rs.75 plus water charges. The municipal tax and other taxes and electricity charges were to be borne by defendant no.1. The month of tenancy was to begin from the first of English calendar month and was to expire on the last day of the same month. The rent note was executed by defendant no.1 in favour of the landlord who was the grandmother of the present respondent-plaintiffs.

2.2 The plaintiffs gave the notice dated 26.4.1977 terminating the tenancy of defendant no.1 and demanding the possession of the suit premises and arrears of rent for the period from 1.9.1974. Since the notice was not complied with, the plaintiffs filed the present suit in the year 1980 praying for a decree of eviction on the ground of arrears of rent, non-user of the suit premises by defendant no.1, subletting by defendant no.1 in favour of defendant no.2, nuisance and annoyance being caused by defendant no.2.

2.3 The Trial Court held in favour of the landlords on the issues regarding arrears of rent and subletting and negatived the ground of nuisance and annoyance by defendant no.2. The trial court also held that the standard rent of the premises was Rs.75 per month plus Rs.5 by way of water charges. The trial Court also gave a finding that defendant no.2 was in exclusive possession of the suit premises and that no evidence was produced by the defendants to show that there was any partnership between defendant no.1 and defendant no.2. The trial Court gave the finding that defendant no.1 was carrying on a separate business at another premises.

2.4 Aggrieved by the aforesaid decree of the Small Causes Court, the defendants carried the matter before the appellate bench of the Small Causes Court. After hearing the parties, the appellate Bench of the Small Causes Court confirmed the decree and the heirs of the original defendants have challenged the said decree in

this revision application.

3 Mr Mehul S Shah, learned counsel for the petitioners, has challenged the finding on the issue of subletting by contending that it was imperative for the Court to give a finding that defendant no.2 was not in possession of the premises before the transfer and that defendant no.1 is ousted from the possession of the premises.

4 On this issue, the trial court has elaborately dealt with the arguments of the defendants in paragraphs nos.13 to 18. The original case of the defendants in the written statement was that defendant no.1 had transferred the premises to defendant no.2 because the premises were taken by defendant no.1 on rent on behalf of the firm consisting of defendants nos.1 and 2 and therefore upon dissolution of the partnership firm, defendant no.2 had taken over the assets and business of the firm and that therefore there was no subletting. Apart from the fact that the defendants thereafter sought to retract the said admission, the defendants did not produce any document in support of the contention that there was any such partnership firm on the date of the execution of the rent note and even at the time of recording of the evidence, the defendants were not in a position to produce any document to support their case of original partnership between the defendants nos.1 and 2.

5 The learned counsel for the petitioners alternatively argued that, in any view of the matter, in view of the notification under the proviso to Section 15 of the Bombay Rent Act, subletting in question was protected as the said proviso expressly empowered the State Government to issue a notification to permit in any area transfer of interest in premises.

6 It is not necessary to go into the details of the notification for the simple reason that the scope of proviso to Section 15 of the Bombay Rent Act came up for consideration before the Bombay High court prior to bifurcation and in *Philatelie Orient vs. Kodak Ltd.*, 57 Bom.L.R. 175, the Bombay High Court held that Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, contains an absolute prohibition against the tenant sub-letting the demised premises or assigning or transferring his interest therein, the proviso to the section serves the limited purpose of withdrawing the absolute prohibition contained in the section to this extent that if the contract between the landlord and the tenant permits of transfer of interest,

the tenant may do so. The proviso does not enable the tenant to assign the tenancy in a case where there is a prohibition against assignment in the contract of tenancy.

7 Having gone through the rent note, it is clear that as per clause 12 of the rent note, there is an express embargo on subletting and, therefore, the notification does not advance the petitioners' case.

8 As regards the contention that the tenant had not parted with exclusive possession of the premises and that mere occupation by the sub-tenant is not sufficient, the Courts below have given a finding of fact that defendant no. 2 was in exclusive possession of the suit premises and that defendant no. 1 was carrying on a separate business at another premises.

9 In view of the above discussion, since the decree of eviction deserves to be confirmed on the ground of subletting, it is not necessary for the Court to deal with the arguments urged by the learned counsel for the petitioners qua the ground of arrears of rent which ground had also appealed to the Courts below.

10 The revision application is dismissed. Notice is discharged.

11. At this stage, the learned counsel for the petitioners prays that the operation of this judgment may be stated in order to enable the petitioners to have further recourse in accordance with law. The learned counsel for the respondents opposes the request.

In the facts and circumstances of the case, the operation of this judgment is stayed till 14.5.2000 on condition that the petitioners file an undertaking before this Court that the petitioners shall not part with possession of the suit premises or any part thereof and that the petitioners shall continue to pay the mesne profits at the rate at which the trial Court fixed the standard rent regularly.

15.12.1999 (M.S. Shah, J.)  
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